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19
20 UNITED STATES DISTRICT COURT
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22 NORTHERN DISTRICT OF CALIFORNIA

23 IMPINJ, INC.,

24 Case No. 4:19-cv-03161-YGR

25 Plaintiff,

v.

26 NXP USA, INC.,

27 Defendant.

28
**IMPINJ, INC.'S REPLY IN SUPPORT OF
ITS MOTION FOR ADMINISTRATIVE
MOTION TO RECONVENE JURY**

Hearing Date: July 25, 2023
Without Oral Argument
Judge: Hon. Yvonne Gonzalez Rogers

Impinj, Inc. has moved to reconvene the jury to avoid the possibility of an unnecessary second trial on the obviousness or non-obviousness of the claims of the '302 patent. The parties

1 agree that the jury verdict is inconsistent, and NXP has made clear that it intends to seek a new
 2 trial on the issue and has cited authority for its motion. Opp. at 2. Impinj believes that NXP has
 3 waived its right to seek such relief by failing to raise the issue before the jury was discharged.
 4 More specifically, the issue of waiver turns on whether the jury verdict was a *general* or *special*
 5 verdict. *See, e.g., Home Indem. Co. v. Lane Powell Moss and Miller*, 43 F.3d 1322, 1331 (9th Cir.
 6 1995) (“We conclude that the district court properly refused to amend the judgment because Home
 7 waived its objection to the jury’s verdict on its contribution claim by not objecting to the alleged
 8 inconsistency prior to the dismissal of the jury.”); *Duhn Oil Tool, Inc. v. Cooper Cameron Corp.*,
 9 818 F. Supp. 2d 1193, 1219 (E.D. Cal. 2011), *reconsidered on other grounds*, No. 05-CV-1411-
 10 MLH (GSA), 2012 WL 13040409 (E.D. Cal. May 17, 2012) (discussing that waiver applies for to
 11 general verdicts but not special verdicts). The Ninth Circuit has held that a court does not have
 12 “authority to grant a new trial on the basis of legally irreconcilable general verdicts.” *Duhn Oil*,
 13 *supra* at 1220 (citing *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1231 (9th Cir. 2003)).

14 Accordingly, the issue turns on whether the jury verdict in the instant case should be
 15 considered general or special. In *Function Media, LLC v. Google Inc.*, 708 F.3d 1310 (Fed. Cir.
 16 2013), the Federal Circuit held a verdict equivalent to that of the instant case was a *general* verdict.
 17 *See id.* at 1329-30 (holding that questions of whether defendant had proven by clear and convincing
 18 evidence that specific claims were anticipated or obvious was a general verdict, subject to waiver
 19 for failure to object prior to dismissal of jury). As the court held there, it would “be improper to
 20 allow [plaintiff] to now argue inconsistencies require an entirely new trial when it failed to object
 21 at the only time when an inconsistency could have been cured.” *Id.* at 1330; *but see Duhn Oil*,
 22 *supra* at 1220 (holding that irreconcilable findings on obviousness of independent and dependent
 23 claims warranted new trial despite apparent waiver).

24 But to the extent the Court wants to avoid the possibility of a new trial, it should reconvene
 25 the jury because the jury was confused regarding how to judge obviousness of dependent claims,
 26 in part because *there was no jury instruction on the difference between dependent and independent*
 27 *claims*. Had the jury understood that the limitations of the independent claim were incorporated
 28

1 into the dependent claims, it would have reached the same conclusions for claims 4 and 7, as it did
2 for claims 1 and 3.

3 NXP argues it is too late to reconvene the jury, because they have been “freed from their
4 obligations to remain insulated from prejudicial sources of information, to avoid talking to non-
5 jurors about the case, and to maintain focus on the key facts, arguments and instruction from the
6 Court.” Op. at 2. But the Court can poll each juror on these issues. While it might be too late, it
7 would be better to see if that is the case rather than simply assume it to be so. Impinj is confident
8 that, if polled, the jurors will explain had they understood the dependent claims included all the
9 limitations of the independent claims, they would have found that there was no clear and
10 convincing evidence of obviousness.

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1 Respectfully submitted:

2 July 21, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via U.S. District Court CM/ECF notification on July 21, 2023 to all counsel of record.

/s/ Ramsey M. Al-Salam

Ramsey M. Al-Salam